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**IN THE MATTER OF THE ARBITRATION**


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**CITY OF FORT MADISON  
PUBLIC EMPLOYER**
**CEO No. 790 Sector 2**
**vs.**
**AWARD**
**PUBLIC PROFESSIONAL &  
MAINTENANCE EMPLOYEES,  
LOCAL 2003 CERTIFIED  
EMPLOYEE ORGANIZATION**


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**I. FACTS**

This matter was scheduled for arbitration by agreement of the parties pursuant to Chapter 20 of the Iowa Code on the 1<sup>st</sup> day of March 2011. Appearing on behalf of City of Fort Madison (hereinafter referred to as City) was Patrick J. O'Connell; Gary Ray and Don Hoskins, Attorneys at Law. Appearing on behalf of Public Professional & Maintenance Employees, Local 2003 (hereinafter referred to as Union) was Randy Schultz, Business Representative.

The hearing was electronically recorded. The parties stipulated that there was no dispute as to the negotiability of the below listed items. These items were arrived at after submission of a dispute pertinent as to whether a longevity bank constitutes wages under Chapter 20. The parties submitted evidence, exhibits and rebuttal arguments. The parties chose not to submit the post hearing briefs or exhibits. Also in attendance for the union included Elmer Puckett, Steward and Leonard Rockhold, Bargaining Team Member. The city had in attendance Bryon Smith, City Manager and Steve Hayes, Operations Director.

**II. IMPASSE ITEMS**

The parties submitted final offers as required within the appropriate time frames. There were two items which were initially at impasse, however these items were stipulated to and removed from my consideration. These items involved Article 2 Intent and Purpose and Article 3 Definitions. They remain as they currently exist in the contract.

There were a number of items that PERB entered a preliminary ruling on negotiability. These involved the negotiability of Articles 6 (6), 12 A (3) (4) (5); 12 C (2)(3); 12 D(3). The board determined that all but 12 D(3) were in fact mandatory topics of bargaining. Since 12 (D)(3) is in fact permissive the Union has requested that it be struck from the contract.

After the board entered its preliminary ruling, the parties agreed that the mandatory language items would be in fact remain in the contract and that Article 12 D(3) would be stricken.

This arbitration ratifies the existence of Article 2 and 3 which were agreed upon by the parties. Further this arbitration approves the maintenance of Article 6 (6), 12 A(3) (4) (5); and 12 C (2)(3).

Stricken from the contract is 12 D (3).

The remaining impasse items which were submitted for the undersigned determination are outlined below.

**IMPASSE ITEM #I**  
**ARTICLE 9**

UNION

Maintain current language which provides:

A. Overtime Section 1

When an employee is on some type of paid leave, the hours when the employee is paid for not working shall be considered as hours worked for computing overtime under this section.

CITY

The City purposes to modify the current language to read as follows:

When an employee is on some type of paid leave, the hours when the employee is paid for not working shall be considered as hours worked *except for sick leave when computing overtime* under this section. (*italics added*)

**IMPASSE ITEM #II**  
**ARTICLE 12**

A. Sick leave Section 2

UNION

Union purposes current language which provides to maintain the first sentence of said article as follows:

Each employee shall be granted fourteen (14) hours of sick leave per month and shall have the right to accumulate unused sick leave up to a maximum of one thousand one hundred and sixty (1,160) working hours.

CITY

The City proposes to modify the current language to read as follows:

Each employee shall be granted fourteen (14) hours of sick leave per month and shall have the right to accumulate unused sick leave up to a maximum of one thousand (1,000) working hours. (*italics added*)

B. Sick Leave Section 6

UNION

Union purposes to modify the current language to read as follows.

*Twelve (12) hours of compensatory time off will be earned at the end of each calendar quarter during which no sick leave was used up to a maximum accumulation of forty-eight (48) hours of compensatory time off. (italics added)*

CITY

The City proposes current language which provides as follows.

Eight (8) hours of compensatory time off will be earned at the end of each calendar quarter during which no sick leave was used up to a maximum accumulation of thirty-two (32) hours of compensatory time.

**IMPASSE ITEM #III**  
**ARTICLE 14**

A. Insurance B; Section 1.

UNION

Proposes to modify the current language to read as follows:

The employee shall, at no cost to the employer, maintain a life insurance policy for each employee in the face amount of *Twenty Thousand (20,000)* together with the additional *Twenty Thousand Dollar (\$20,000)* in the event of accidental death not covered by workers compensation. (*italics added*)

CITY

Maintain current language which provides as follows.

The employee shall at no cost to the employer, maintain a life insurance policy for each employee in the face amount of Ten Thousand Dollar (\$10,000) together with an additional Ten Thousand Dollar (\$10,000) in the event of accidental death not covered by workers compensation.

B. Insurance C Dental Insurance

UNION

Proposes to modify current language to provide as follows:

*The employer will offer at no cost to the employee single person dental health coverage. (italics added)*

CITY

Maintain current language which provides as follows.

The employer will offer to the employees, at their expense, the option of purchasing single and/or family dental insurance.

**IMPASSE ITEM #IV**

Article 19; Performance Evaluation

UNION

Union proposes to delete Article 19 in the entirety.

CITY

City proposes to maintain current language as follows :

A new employee shall be evaluated not later than the completion of the employee's probationary period. A permanent employee shall be evaluated annually, and the evaluation shall be completed by the employee's anniversary date and shall be discussed with the employee within two (2) weeks of the completion in a meeting between the employee and the immediate supervisor. The evaluation document shall contain ample space for the employee to write comments upon receiving the evaluation document or within three (3) days of receipt of the evaluation document prior to the employee's signing the evaluation document.

**IMPASSE ITEM #V**  
**WAGES**

A. Supplemental Pay; Longevity Section 1

UNION

Proposes a modification of the amount paid per month.

Required Period Completed

Amount Per Month

5 years	\$70
10 years	\$80
15 years	\$90
20 years	\$100
25 years	\$110
<u>CITY</u>	<i>(italics added)</i>

Proposes to maintain current language which provides as follows:

<u>Required Period Completed</u>	<u>Amount Per Month</u>
5 years	\$60
10 years	\$70
15 years	\$80
20 years	\$90
25 years	\$100

B. Article 16; Supplemental Pay; new Section 3

UNION

*Union proposes that a new numbered paragraph 3 be added to Article 16; numbered Section 3 which would provide as follows.*

*Employee shall receive in addition to the base wage and hourly compensation, a longevity bank to be received as severance pay as follow:*

*Employee shall receive two (2) days per month, accumulation up to one hundred twenty (120) days during the first five years of employment that will be placed in a longevity bank. Employees who, on July 1, 2011, have sixty (60) months of service with the City will be credited with one hundred and twenty (120) days in their longevity bank. Employees shall receive twenty-five percent (25%) of the accumulated longevity bank at the employee's current pay rate upon separation of the employment for one (1) thru nine (9) years of service with the City. Employees shall receive fifty percent (50%) of the accumulated longevity bank at the employee's current pay rate upon separation of employment for ten (10) thru nineteen (19) years of service with the City. Employees shall receive one hundred percent (100%) of the accumulated longevity bank at the employee's current pay rate upon separation of employment*

*after twenty (20) years of service with the City. (italics added)*

#### CITY

City proposes current language which is nonexistent in the contract.

#### C. Article 17; Appendix A; Wage Schedule

#### UNION

Proposes increases of wages *thirty-two (.32)* cents per hour per employee.

#### CITY

*Proposes increases of five percent (.5%) increase on July 1st 2011 and a five percent (.5%) increase on January 1<sup>st</sup>, 2012 of the contract year.*

#### D. Article 17; Wages; Section 5;

#### UNION

Union proposes to modify the current language to read as follows:

Any employee who obtains a Class A Commercial Drivers License shall have an additional ten cents (.10) added to the employees regular hourly wage rate. Effective July 1, 2011 any employee who obtains a Class A Commercial Drivers License shall have *thirty cents (.30)* added to the employees hourly wage rate. Employees who obtain a Class A License shall be reimbursed for the additional cost under the same conditions as Section 7 of Article 15. *(italics added)*

#### CITY

City proposes to maintain current contract language which provides as follows:

Any employee who obtains a Class A Commercial Drivers License shall have an additional ten cents (.10) added to the employees regular hourly wage rate. Effective July 1, 2011 any employee who obtains a Class A Commercial Drivers License shall have twenty cents (.20) added to the employees hourly wage rate. Employees who obtain a Class A License shall be reimbursed for the additional cost under the same conditions as Section 7 of Article 15.

### **III. LAW**

Iowa Code Section 20.22(9) provides: The panel of arbitrators shall consider, in addition to any other relevant factors, the following factors:

A. Past collective bargaining contracts between the parties including the bargaining that led up to such contracts.

B. Comparison of wages, hours and condition of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to the facts peculiar to the area and the classification involved.

C. The interests and welfare of the public, the ability of the public employer to finance economic adjustments and the effect of such adjustments on the normal standard of service.

D. The power of the public employer to levy taxes and appropriate funds for the conduct of its operations.

It is mandated that all issues set forth above are reviewed in light of the foregoing factors.

Iowa State Education Association v. Public Employment Relations Act

The weight to be given to each of these factors is placed in the discretion of the arbitrator.

Moravia Community School District v. Moravia Education Association

#### **IV. FINDINGS OF FACT**

##### **A) General**

Fort Madison is a county seat community located in the Southeast Corner of the State of Iowa. Fort Madison is located in Lee County, Iowa. Lee County, Iowa, is noteworthy as the only county in the State of Iowa with two county seats, Keokuk and Fort Madison. Fort Madison has a population of 11,051 according to the 2010 census.

PPME has been certified as the exclusive bargaining representative for the Public Works Department employees since 1980. The bargaining unit consists of 15 employees who are broken down into 6 classification of jobs. These categories and their break down of staff are as follows:

Truck Drivers	4 employees
Machine Operators	4 employees
Laborers	4 employees
Server Tech	1 employee
Sign Tech	1 employee
Mechanic Helper	1 employee

The parties have generally enjoyed harmonious labor relations until the last collective bargaining session. The parties went through both fact finding and binding arbitration to arrive at their current labor relations contract.

The parties requested mediation services this year and said mediation was conducted on January 3, 2011 without success.

#### B) History

Fort Madison has five (5) unionized collective bargaining units and a group that's not unionized. The City contends that by treating all of the units uniformly; it has created a pattern bargaining system in Fort Madison. The City sets forth in Exhibit 0.26, 0-27, 0-28, 0-29, 0-30, 0-31, 0-03 as evidence of this pattern.

The City also outlines how the current economic crisis has affected the region. Lee County has the highest unemployment rate in the State of Iowa. Fort Madison is not the poorest, but is one of the poorest of all comparable cities in terms of assessed property values. The Fort Madison Community School District has been suffering from declining enrollment and is facing decreasing state funding.

Conversely over the past decade the city has financed health insurance increases far in excess of the consumers piece index.

The city provided an analysis of benefits including wage increases, insurance coverage items and vacation over the past decade. These exhibits reveal that all the bargaining units have consistently received benefits in a uniform manner.

#### C) Comparability Group

The union has proffered the following communities as comparable communities and their populations:

Indianola	14,782
Oskaloosa	11,463
Spencer	11,317
Fort Madison	11,051
Keokuk	10,780
Pella	10,352
Grinnell	9,218
Washington	7,266

The union's rationale for inclusion of these groups include:

- i.) All comparable employee groups
- ii.) Comparable Populations
- iii.) County seat communities
- iv.) Geographic location
- v.) Comparable population growth



The City proffered the following comparable communities:

Indianola  
Oskaloosa  
Newton  
Boone  
Keokuk

The City then revealed that two of its comparable communities fail to even have a certified public works department, all other than Keokuk are located a distance from Fort Madison and some are bedroom communities to Des Moines, Iowa. A majority of the unionized employees from these communities are in mixed employee groups.

The parties debated the actual 2000 census numbers. Apparently, the original census revealed a count of 10,715 residents. A dispute arose about the bureau failing to count the inmates housed at Fort Madison Penal Institute into the census. City Administrator Bryon Smith advised that an amended 2000 population indicated 11,476 when adding the inmates into the count.

The significance, if any this has is to determine whether the population has increased or in fact decreased. No one could say whether the 2010 census of 11,051 included or excluded the prisons inmates.

The Union and the City agreed that the City of Keokuk satisfies all the criteria and prior arbitrators have found the same to be the most similar city for comparability purposes.

#### D) Ability to Pay

The parties mutually agreed that none of the unions final offers would place the City in a financial position in which it would have an inability to pay.

### **V. DISCUSSION**

The disputed items at impasse reveal a tumultuous labor relations history amongst the parties in the last two years. PERB'S intervention highlights the recent history of discord.

A significant portion of the City's arguments focus on what it as referred to as "internal comparability." As noted in prior awards, this term is a misnomer. Other bargaining units do not perform "comparable work."

Pattern bargaining is, however, relevant when considering the bargaining history of the parties.

The City asserts that by awarding any of the Union proposals would have a whip saw effect causing it to grant concessions to other bargaining units.

Both parties' proposals would require the undersigned to make significant language concessions from that of the current contract.

As was pointed out in City's Exhibit D-4; the undersigned is not alone in his need to require a showing of special need to make these modifications. The Give and Take of the bargaining table not the arbitrator's pen should forge the terms and conditions of the parties' contract.

Article 9 reveals one of these items requiring the undersigned to modify the current contract. The City wants to prevent overtime compensation if the employee's eighty (80) hours of work consist of sick leave. The City urges that all of the other bargaining units have agreed to this language modification. However, all other units are permitted to convert unused sick leave to a cash payment. The other units may in fact be less affected by this language modification. They possibly would use other time off in personal days to ensure their overtime is compensated at the premium rate. Whereas employees of this unit lose the value of this benefit if its not used. No costing of this benefit was provided by either party.

A similar item is addressed in Article 12 where the City desires to restrict the cap on accumulated unused sick time from one thousand one hundred and sixty (1160) to one thousand hours (1000). The Union desires to maintain the cap at one thousand one hundred and sixty (1160) hours but it seeks to increase compensatory time accumulating from eight (8) to twelve (12) hours in any calendar quarter to a maximum of forty eight (48) hours. Currently, the maximum is thirty two (32) hours. The City seeks to maintain the current language. Ironically, both of these issues involve one impasse item requiring the contract to be modified in one form or another. Thereby requiring the undersigned to determine which modification is the most reasonable. The City offered an exhibit reflecting that comp time increased cost would be approximately \$3,691.52. Conversely, a loss of 160 hours at the same rate of pay for 15 employees would cost this unit \$39,552.00.

Article 14 deals with insurance. Two modifications are proposed by the Union. These modifications would require the City to pay for coverage which would double the death benefit currently existing under the current contract and require the City to pay for single person dental coverage for the Union. The Union costed the proposal during the arbitration for the dental coverage cost based on current monthly single bronze plan of \$2,710.80.

Article 19 language would require the undersigned to delete language which sets forth a management right. That is, to conduct evaluations of the Union's membership. It also sets forth the time frame that these evaluations take place. The Union desires to strike this language, claiming that the evaluations have not been conducted for a number of years. Steve Hayes countered these contentions with his testimony.

Lastly, the Union's wage proposal is multifaceted. Aside from the increase to base wages of 32 cents (.32) per hour; increases to longevity steps by \$10 a category; increases compensation for members who possess a CDL from twenty cents (.20) per hour to thirty cents (.30) per hour and the creation of a longevity bank would be fully funded for all employees who've been employed by the City for five (5) years.

It is the undersigned's opinion that the Union's comparability group provides a more accurate comparability group. Using non-union employees groups are of little value. These employees are told what they will receive. They have the choice to terminate their employment or accept what has been offered. They are hardly on par with their union counterparts, as the City asserts. If this was not the case, our neighbors in Wisconsin would not be addressing the tumultuous times in their labor relations law.

Because of Fort Madison's location at the Southeastern Border of the state any comparable community other than Keokuk will be criticized as being located at a distance. Communities from bordering states would only be relevant under the "other factor" criteria.

In regard to overtime continuing to include sick leave, the Union fails to provide an analysis as to what its comparable communities provide.

The City's analysis provides that Fort Madison's sick leave language is only paralleled by the City of Oskaloosa.

The City also contends that since there is only one payroll clerk for the city that the clerk would need to differentiate between the Public Works Department and its other employees when performing her duties as to overtime.

The undersigned believes that the payroll clerk actually has a two-step process they need to conduct under the City's proposal. That is to first determine whether the employee has worked over eighty (80) hours and then review whether any of those eighty (80) hours were paid from an employees sick leave. Modifying the contract language would actually make the process less simpler for the clerk. This individual currently only has to determine whether over eighty (80) hours were submitted. There would not need to be a second step. If the City's goal is simplicity, it should maintain current language.

Pursuant to Leaves of Absence, the Union does not provide a comparability analysis as to capping sick leave from one thousand one hundred and sixty (1160) to one thousand (1000) hours nor increasing the rate and cap of compensatory time.

The City likewise doesn't proffer an analysis as to its comparables. It does however offer exhibit LOA-2 which was the Union's exhibit from last years contract arbitration. Using that exhibit, an average of approximately eight hundred (800) hours

of maximum sick leave was the norm when looking at its current comparables.

Conversely, the City's three (3) comparable communities provide: unlimited accumulation for Boone while Keokuk and Oskaloosa averages one thousand forty nine (1049) hours. Neither party submitted comparables as to compensatory time accumulation. The City reveals in Exhibit LOA-3 that the library unit accrues six (6) hours a quarter for a maximum of thirty-two (32) hours while its police department accrues twelve (12) hours a quarter with a maximum of forty-eight (48) hours. Both fire and water departments are eight (8) hours per quarter for a maximum of forty-eight (48) hours.

No comparability analysis was provided by the Union as to life insurance nor dental coverage. The City's comparability analysis as reflect on Exhibit 1-5 reveals that only Boone pays for an employees dental plan.

Both parties agree that the parties' life insurance contract language for this unit differs from other City employees' life insurance. The other contracts provide for payment without regard to whether worker's compensation coverage is effective. With this unit's coverage, the employee would receive an additional ten thousand (\$10,000) if the death was not covered by workers compensation beyond the \$10,000 face value. The Union's proposal would double these amounts, making the possible payout \$40,000.00

An analysis of the different coverages is outlined in Unions Exhibit #13.

I am therefore left with the final impasse item meriting discussion: wages. The Union's proposal is multifaceted. The current contract provides a base salary, which is indexed by years of service. This longevity index is then supplemented by a monthly stipend which is also tied to one's longevity with the City. Lastly, we have an hourly compensation in addition to the foregoing where an employee maintains a CDL type of driver's license. This license enables the owner to operate commercial vehicles upon the roads of this state.

The Union's multi-faceted proposal is to:

- a) Award its membership with a 32 cent (.32) per hour increase across the board.
- b) Award its membership with a ten dollar (\$10) increase to the longevity steps it additionally compensates its employees
- c) Awards its membership with a 10 cent (.10) increase per hour for employees who obtain and maintain a CDL driver's license certification
- d) Creation of a Longevity Bank, which is paid out in proportion to the number of years employed by the City.

The City proposes to increase all the wages on the salary matrix by .05% as of

July 1, 2011, and an additional .05% on January 1, 2012. The cost of this increase would be a .075% cost to the City.

The Union asserts that these modifications are necessary to keep pace with their comparables. According to its comparables, a Ft. Madison machine operator is paid the least and more than \$2.50 less per hour than the average compensation for like work amongst its comparables. See Union Exhibit #5.

Conversely, the City admits that “most other communities are better off than Fort Madison” and therefore external comparability should not be used. No comparability as to these other communities was submitted by the City. The undersigned has previously outlined his philosophy on “internal comparability.” The City contends that the compensation provided to the other bargaining units is the most reasonable due to Fort Madison’s dire financial condition. Although the City doesn’t dispute it has an inability to pay these increases, it attempts to bootstrap the effect such an award would have on its future negotiations.

The Union costs its base salary as costing 1.9% and its \$10 increase to longevity of .35%. I am unable to observe a Union exhibit which costs the CDL increase nor the Longevity Bank severance benefit. Assuming that its \$10 increase is an average of 5.8 cents (.058) per hour, one may conclude that the 10 cent (.10) per hour CDL benefit is approximately a .70% increase. Since only 8 persons of its membership receive this benefit, the cost to the City would be a little more than halved, or .40%. Without consideration of the Longevity Bank, the Union’s proposal would be somewhere costing the City approximately a 2.6% wage increase exclusive of the longevity bank.

Conversely, the City’s exhibit W-9 reflects how it had costed the Union’s proposal inclusive of the Longevity Bank. Their costing reflects a 26.6% increase as the result of all the sub items in this impasse item. The undersigned is not clear whether this 26.6% increase is assuming that all employees retire after 20 years with FICA and IPERS or if every employee would retire today with their current longevity used to determine their payout.

It is abundantly clear, however, that the Longevity Bank, according to the City’s calculations, amounts to approximately 90% of this increase in costs and would be as substantial deviation from its comparables and the history of awards.

## **VI. AWARD**

### **IMPASSE ITEM #I**

I hereby award the Union proposal to maintain current language which would provide:

“When an employee is on some type of paid leave, the hours when the

employee is paid for not working shall be considered as hours worked when computing overtime under this section.”

as the most reasonable proposal.

#### **IMPASSE ITEM #II**

I hereby award the Union proposal to maintain a cap of 1,160 hours and modify compensatory time accumulation at 12 hours per quarter for a maximum of 48 hours as the most reasonable proposal.

#### **IMPASSE ITEM #III**

I hereby award the City’s proposal to maintain current language as to life insurance coverage and dental insurance coverage and expenses as the most reasonable proposal.

#### **IMPASSE ITEM #IV**

I hereby award the City’s proposal to maintain current language as to Article 19 as to performance evaluations as the most reasonable proposal.

#### **IMPASSE ITEM #V**

I hereby award the City’s proposal to increase wages by .5% on July 1, 2011, and .5% on January 1, 2012. This while maintaining the current stipends for longevity and CDL compensation. No Longevity Bank/severance pay language is awarded. This determination as to wages is the most reasonable.

#### **CONCLUSION**

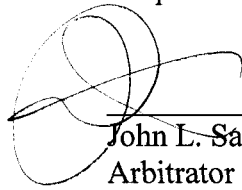
The undersigned hereby awards the current language as is currently embodied in Articles 2 (Intent and Purpose) and Article 3 (Definitions) by agreement of the parties.

The undersigned hereby awards the current language as Article 6 (6); Article 12 A(3)(4)(5); Article 12 C(2)(3). Article 12 D(3) is hereby stricken from the contract by agreement of the parties.

The undersigned awards the current contract language as to Articles 9, 14, 16, and 19. The undersigned awards the City’s proposal as to wages inclusive of their proposed .5 percent increase on the first of July and January of the one year contract.

**SO AWARDED.**

Respectfully Submitted,



John L. Sandy  
Arbitrator

### CERTIFICATION OF SERVICE

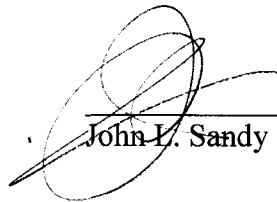
I certify that on the 15<sup>th</sup> day of March 2011, I served the foregoing Award of Arbitrator upon each of the parties in this matter by mailing a copy to them at their respective addresses as shown below:

Gary L. Ray  
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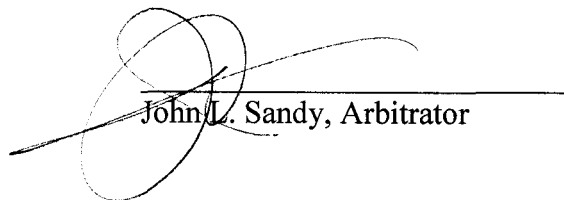
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Randall Schultz  
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Sigourney, IA 52591



John L. Sandy

I further certify that on the 15<sup>th</sup> day of March 2011, I will submit this Award for filing by mailing it to PERB, 510 E. 12<sup>th</sup> St., Suite 1B, Des Moines, IA 50319-0203.



John L. Sandy, Arbitrator